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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
NOTICE OF MOTION NO. 1864 OF 2003  
IN  
SUIT NO. 638 OF 1995

Homayun Boman Irani

(Khavar) & Ors. ... Plaintiffs.

VS.

Khodadad H. Irani ... Defendant.

Mr. Sandeep Bhagwat for plaintiffs.

Mr. Raj Baid for defendant.

**CORAM : S.U.KAMDAR, J.**

**DATE : 19th OCTOBER, 2005.**

P.C.

. The present suit is filed for setting aside the order dated 10.3.2000 passed by the Prothonotary & Senior Master dismissing the suit for non-service of the writ of summons. The suit is of 1995. The writ of summons are not served for five years. The motion is taken out three years after the dismissal of the suit. However, the learned counsel appearing for the plaintiff states that in the interest of justice the matter may be heard on merits and the suit be restored if necessary on payment of heavy

costs. Keeping in mind the fact that the matter should be heard on merits, I grant the motion in terms of prayer clauses (a) and (b) only. The plaintiff is directed to pay costs of Rs. 10,000/- to the Maharashtra State Legal Services Authority within a period of two weeks from today. If the amount of cost is not paid within the aforesaid period, motion to stand dismissed automatically without reference to Court. In that view of the matter, motion does not survive. The same is dismissed as infructuous.